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HOUSE BILL 544

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joe M Stell

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO OCCUPATIONAL LICENSES; ENACTING THE WATER WELL
DRILLERS LICENSING ACT; REQUIRING LICENSURE; PRESCRIBING POWERS
AND DUTIES; CREATING A FUND; PROVIDING PENALTIES; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 11 of this act may be cited as the "Water Well Drillers
Licensing Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Water Well Drillers Licensing Act:

A. "water well" includes water-producing wells,
injection wells and monitoring wells; and

B. "water well driller" means a person licensed by

1 the state engineer to drill a water well or install a pump on a
2 water well.

3 Section 3. [NEW MATERIAL] LICENSE REQUIRED. --

4 A. It is unlawful for a person to:

5 (1) drill a water well without being a
6 licensed water well driller; or

7 (2) represent himself as a water well driller
8 unless he is licensed pursuant to the Water Well Drillers
9 Licensing Act.

10 B. A driller trainee who is under the direct on-
11 site supervision of a water well driller is exempted from the
12 provisions of this section.

13 C. A person who constructs a driven well is
14 exempted from the provisions of this section if the outside
15 diameter of the casing of that well does not exceed two and
16 three-eighths inches.

17 Section 4. [NEW MATERIAL] STATE ENGINEER-- DUTIES. -- The
18 state engineer shall:

19 A. adopt rules to carry out the provisions of the
20 Water Well Drillers Licensing Act and enforce the rules;

21 B. conduct an examination process for licensure and
22 issue licenses;

23 C. establish requirements for continued proficiency
24 in water well drilling; and

25 D. establish ethical standards of conduct for water

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1 well drillers, including that a water well driller shall:

2 (1) disclose all known adverse conditions
3 about the quantity and quality of ground water in the area of a
4 prospective well;

5 (2) recommend that clients have well water
6 analyzed;

7 (3) inform the state engineer of any unethical
8 or unauthorized conduct of another water well driller known to
9 the water well driller;

10 (4) accurately represent to the prospective
11 client the qualifications and capabilities of the licensee and
12 the licensee's equipment;

13 (5) not offer to perform services except in
14 the class of well for which the water well driller is licensed
15 and qualified by experience or knowledge;

16 (6) not evade contractual responsibility;

17 (7) not enter into a partnership or agreement
18 with or give the water well drilling equipment to a person not
19 legally qualified to perform the services to be rendered; and

20 (8) not falsely promote services, mislead or
21 deceive.

22 Section 5. [NEW MATERIAL] STATE ENGINEER- - POWERS. - - The
23 state engineer may:

24 A. obtain an injunction in district court against a
25 person who drills a well in violation of the provisions of the

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1 Water Well Drillers Licensing Act;

2 B. suspend or revoke, upon notice and hearing, a
3 water well driller's license for violation of the Water Well
4 Drillers Licensing Act or rules adopted pursuant to that act;

5 C. recover in the district court of the county
6 where the well involved is located any damages caused by a well
7 drilled in violation of the Water Well Drillers Licensing Act;
8 and

9 D. recover a civil penalty on behalf of the state
10 in the amount of one thousand dollars (\$1,000).

11 Section 6. [NEW MATERIAL] REQUIREMENTS FOR LICENSURE--
12 RENEWAL. --The state engineer shall issue or renew a biennial
13 license as a water well driller to an applicant who:

14 A. files a completed application accompanied by a
15 license application fee of twenty-five dollars (\$25.00) and a
16 license or renewal fee to be established by the state engineer
17 of not more than four hundred dollars (\$400);

18 B. is at least eighteen years of age;

19 C. for a new license, passes the national ground
20 water association certification examination or an equivalent
21 examination as determined by the state engineer;

22 D. for license renewal, applies for renewal no more
23 than thirty days after the expiration of the license and
24 completes at least eight hours of continuing education credits
25 in courses approved by the state engineer; and

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1 E. agrees to comply with the rules established by
2 the state engineer.

3 Section 7. [NEW MATERIAL] LICENSE AND REGISTRATION
4 TERMS. --

5 A. The water well drilling license shall be
6 displayed in a conspicuous place in the licensee's principal
7 place of business.

8 B. A water well driller shall notify the state
9 engineer within thirty days after a change of address or any
10 other information required under conditions of the license.

11 C. A water well drilling license is not
12 transferable or reassignable.

13 Section 8. [NEW MATERIAL] BOND REQUIRED. -- A license shall
14 not be issued pursuant to the Water Well Drillers Licensing Act
15 unless the applicant files with the state engineer a surety
16 bond in the sum of twenty-five thousand dollars (\$25,000)
17 ensuring the applicant's compliance with the provisions of the
18 Water Well Drillers Licensing Act.

19 Section 9. [NEW MATERIAL] DENIAL, SUSPENSION OR
20 REVOCATION OF LICENSE. -- In accordance with procedures set forth
21 in the Uniform Licensing Act, the state engineer may deny,
22 suspend or revoke a license held or applied for under the Water
23 Well Drillers Licensing Act upon grounds that the licensee or
24 applicant:

25 A. made a false statement or gave false information

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1 in connection with an application for a license or renewal or
2 reinstatement of a license; or

3 B. willfully violated any provision of the Water
4 Well Drillers Licensing Act or rules established pursuant to
5 that act.

6 Section 10. [NEW MATERIAL] FUND CREATED. -- The "water well
7 drillers fund" is established in the state treasury. License
8 and examination fees received by the state engineer pursuant to
9 the Water Well Drillers Licensing Act shall be deposited in the
10 fund and shall be used by the state engineer for the
11 administration of that act. The state treasurer shall invest
12 the fund as other state funds are invested, and all income
13 derived from the fund shall be credited to the fund. All money
14 in the fund is appropriated to the state engineer to carry out
15 provisions of the Water Well Drillers Licensing Act.

16 Disbursements from the fund shall be drawn on warrants of the
17 secretary of finance and administration pursuant to vouchers
18 signed by the state engineer or his authorized representative.
19 Balances in the fund shall remain in the fund and shall not
20 revert to the general fund.

21 Section 11. [NEW MATERIAL] PENALTIES. --

22 A. A person who fraudulently represents himself to
23 be a water well driller is guilty of a misdemeanor and shall be
24 punished by a definite term of imprisonment of less than one
25 year or a fine of not more than one thousand dollars (\$1,000)

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1 or both.

2 B. A person who violates a provision of the Water
3 Well Drillers Licensing Act, except as provided for in
4 Subsection A of this section, is guilty of a misdemeanor and
5 shall be punished by a fine of not less than fifty dollars
6 (\$50.00) nor more than five hundred dollars (\$500). Each day
7 that a violation continues shall be construed as a separate
8 offense for the purposes of this subsection.

9 Section 12. Section 72-12-15 NMSA 1978 (being Laws 1949,
10 Chapter 178, Section 4) is amended to read:

11 "72-12-15. UNAUTHORIZED DRILLING--RELIEF. -- ~~[No person~~
12 ~~owning or controlling lands shall permit the drilling of a well~~
13 ~~thereon for water from an underground source as herein defined~~
14 ~~by any person other than a driller licensed under the~~
15 ~~provisions of this act. No person shall produce water from an~~
16 ~~underground source through any well drilled in violation of~~
17 ~~this act. No person shall apply water from such underground~~
18 ~~source to land having no valid water right for the purpose to~~
19 ~~which applied.]~~ The state engineer may apply for and obtain an
20 injunction in the district court of the county in which ~~[any]~~ a
21 well or land affected is situated against ~~[any]~~ a person, firm
22 or corporation who ~~[shall drill or begin]~~ drills or begins the
23 drilling of a well in violation of the provisions of ~~[this act,~~
24 ~~or who shall cause, allow or permit the drilling of a well by a~~
25 ~~person other than a licensed driller upon land owned or~~

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1 ~~controlled by him, or who shall produce water from any well~~
2 ~~drilled in violation of this act or who shall apply water from~~
3 ~~an underground source as hereinabove defined to lands having no~~
4 ~~valid water right for the purpose to which applied] the Water~~
5 Well Drillers Licensing Act or without first obtaining a permit
6 to drill the well. This provision shall in no wise be
7 construed to affect the existing right of a court of equity in
8 the exercise of its general equity powers to grant relief to
9 the state [~~of New Mexico~~] by injunction or otherwise. "

10 Section 13. TEMPORARY PROVISION. --A person who has a
11 driller's license on the effective date of this act shall have
12 until January 1, 2005 to obtain a water well driller's license
13 pursuant to the terms of this act.

14 Section 14. APPROPRIATION. --One hundred fifty thousand
15 dollars (\$150,000) is appropriated from the general fund to the
16 office of the state engineer for expenditure in fiscal year
17 2004 to carry out the provisions of the Water Well Drillers
18 Licensing Act. Any unexpended or unencumbered balance
19 remaining at the end of fiscal year 2004 shall revert to the
20 general fund.

21 Section 15. REPEAL. --Sections 72-12-12 through 72-12-14
22 and 72-12-16 NMSA 1978 (being Laws 1949, Chapter 178, Sections
23 1 through 3 and 5, as amended) are repealed.

24 Section 16. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 2003.

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